THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.10487 of 2006

Dated:24-05-2006

Between:

Sanka Srinivas Krishna

..Petitioner

and

The Regional Passport Officer, Secunderabad.

..Respondent.

WRIT PETITION NO.10487 of 2006

ORDER:

The petitioner was issued a Passport bearing No. A-2704392 on 5.2.1997 by the Regional Passport Office, Secunderabad. It is valid upto 4.2.2007. The petitioner

completed his Post Graduation in Computer Applications in the year1998 and secured an employment in United States of America. He was also granted employment Visa by the American Embassy. On the strength of the same, the petitioner proceeded to United States on 25.6.2000. He states that after expiry of about 2½ years, he visited India on 28.11.2002 and left for United States of America on 29.12.2002. The petitioner made one more visit in the next year and ultimately got married on 17.12.2003. The wife of the petitioner was also granted Visa in December, 2003 and both of them went to United States on 27.12.2003.

Petitioner and his wife came to India on 14.3.2006 and when they were about to return to United States on 3.4.2006, the Inspector of Police, Immigration, Special Branch at the Rajiv Gandhi International Airport, Hyderabad seized the passport of the petitioner. The basis for seizure of the passport of the petitioner is said to be a note forwarded by the Ministry of External Affairs to the Regional Passport Office, Secunderabad bearing reference WRT No.26(295)/Pol/03, dated 14.12.2003 thereby the petitioner was disabled from proceeding to United States. He filed this Writ Petition challenging various proceedings that culminated in seizure of his passport.

Petitioner filed Writ Petition No.8557 of 2006. An interim direction was issued by this Court on 9.5.2006 directing the respondents to communicate the reasons for seizure or cancellation of the passport as the case may be. The respondent has since communicated the reasons through his proceedings dated 10.5.2006, it is stated that the Deputy Commissioner of Police, Crime Branch of Egmore, Chennai addressed a letter to the respondent on the basis of a complaint from Fraud Prevention Unit of U.S. Consulate alleging that one individual by name Sri Srinivas Sanka obtained three passports in his name as well as in the name of Mahender Kumar Gupta and Sanka Srinivas Krishna (name of the petitioner) with different data. It was stated that on the strength of the said information, show cause notice was issued to three individuals and there was no response from Srinivas Krishna Sanka. The communication is said to have returned undelivered on 25.11.2003 with remarks “no such person”. Reference is made to certain communications received from the office of the Ministry of External Affairs.

Petitioner contends that there is absolutely no similarity between himself and other name Sanka Krishna except for portion of the name. He contends that he was issued passport way back in the year 1997 and left the country in the year 2000 itself

on employment. He states that he did not receive any notice and at no point of time any doubt was expressed about his passport.

Respondent filed a counter affidavit narrating the events that have been stated in their communication dated 10.5.2006. It is alleged that the passport of the petitioner came to be cancelled in view of the fact that there was no response to the show cause notice.

Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioner submits that except there is a remote similarity in the name of the suspected person by name Srinivas Sanka and the petitioner herein, there did not exist any basis either for suspecting or proceeding against the petitioner. He further contends that on account of the seizure of the passport, the petitioner lost his employment in the United States and he is likely to loose his status, in United States. He contends that whatever be the justification for the respondent in taking the steps referred to above, when they did not have any information as to the particulars of the petitioner, they ought to have corrected the injustice meted out to the petitioner, afterwards.

Sri A. Rajasekhar Reddy, Assistant Solicitor General appearing for the respondent submits that the action initiated by his client was on the basis of the information received from the U.S. Embassy and respondent was left with no alternative except to cancel the passport in view of the failure to the response to the show cause notice.

The whole episode started with the suspicion entertained by the police authorities at Egmore as to the genuineness of the passport obtained by one Sri Srinivas Sanka. The said individual obtained passport from the Regional Passport Officer, Secunderabad. The learned Assistant Solicitor General had made available to this Court the original record of the passport of Sri Srinivas Sanka as well as the petitioner. There does not exist even, a remote similarity in the photographs, names of the parents, places of birth, places of residence, details of study etc., between the two. Further, antecedents of every applicant, for issuance of the passport are verified through competent police officers and there was no possibility for mistaking the petitioner for Srinivas Sanka or vice versa.

There may have been some justification for the respondent or the authorities to initiate the proceedings, when relevant particulars were not available. However,

atleast when the respondent proposed to issue show cause notice, an exercise ought to have been undertaken by verifying the original files of the concerned individuals, if necessary, by verifying from the relevant police records.

The only step that appears to have been taken by the respondent in this context is, issuance of show cause notice. In the year 2003, the petitioner was in the United States and obviously the communication sent to him did not result in any response. This failure was treated as absence of defence and the passport was cancelled through proceedings dated 11.12.2003. Even the proceedings through which the passport was cancelled were not communicated to the petitioner.

This Court would not have undertaken any exercise of verification of the said aspects, had there been an inkling of doubt, as to the genuinity of the particulars furnished by the petitioner, or his conduct subsequent to the issuance of the passport. In fact, nothing is stated in the counter affidavit touching the conduct of the petitioner. The suspicion expressed by the police at Egmore, Chennai virtually stands cleared with the comparison of the particulars of the two passports including the photographs of the persons and the reports submitted by the respective police authorities in relation to the said two individuals. It is stated that the police, Egmore has since expressed its view that nothing incriminating is found against the petitioner. Independent of that, a perusal of the record discloses that is nothing, incriminating against the petitioner. He has already been subjected to undue hardship, for no fault on him.

Time and again, the Supreme Court held that the fundamental right to move freely in the territory of India enjoined under Article 19 of the Constitution of India, includes the right to move abroad and withholding of the passport would cripple such a right, seriously.

Learned Assistant Solicitor General raised an objection as to the maintainability of the writ petition in view of the existence of the provision for an appeal. The objection does not deserve consideration for more than the reasons than the one. Basically, the order passed against the petitioner is in violation of the principles of natural justice. It is settled principle of law that existence of alternative remedy is no bar, for entertaining a writ petition where the principles of natural justice are violated. Secondly, the urgency for the petitioner to move out of India is so acute that it cannot brook the delay, that would result in the course of availing the remedy of appeal.

Having regard to the facts and circumstances of the case, the Writ Petition is allowed and the order dated 11.12.2003 passed by the respondent revoking the passport of the petitioner, and the other proceedings culminating the same are set aside. Consequently, the respondent is directed to return the Passport to the petitioner so as to enable him to avail the benefits of the same without any hindrance. The respondent shall also intimate all the concerned authorities about the orders passed by this Court in this writ petition.

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L. NARASIMHA REDDY, J

24.5.2006

CC in two days

B/o.

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